

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3471-01  
Bill No.: SB 639  
Subject: State Attorney General; State Auditor; Civil Procedure; Courts; Crimes and  
Punishment; Medicaid; Department of Social Services  
Type: Original  
Date: April 6, 2010

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Bill Summary: The proposal authorizes individuals to sue for MO HealthNet fraud under  
a state false claims act.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(\$289,675) to Unknown	(\$330,306) to Unknown	(\$337,214) to Unknown
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$289,675) to Unknown</b>	<b>(\$330,306) to Unknown</b>	<b>(\$337,214) to Unknown</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Federal	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>(Less than \$100,000)</b>	<b>(Less than \$100,000)</b>	<b>(Less than \$100,000)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	2.5	2.5	2.5
<b>Total Estimated Net Effect on FTE</b>	<b>2.5</b>	<b>2.5</b>	<b>2.5</b>

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Mental Health, Office of the Governor, Missouri House of Representatives, Office of the State Auditor, Missouri Senate, and Office of the State Public Defender** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Office of Prosecution Services** assume the proposal would have no measurable fiscal impact the Office of Prosecution Services or county prosecutors.

Officials from the **Office of the Attorney General (AGO)** assume reviewing materials associated with potential claims of fraud, filing pleadings as intervenors, bringing causes of action alleging Medicaid fraud and providing mandated reports to the general assembly and governor will require additional staff. AGO assumes it would require 2 FTE Assistant Attorneys General II (at \$47,500 per year) and ½ FTE Investigator (at \$32,000 per year) to meet the requirements of the bill. AGO assumes the total cost of the proposal to be \$189,675 in FY 2011, \$230,306 in FY 2012, and \$237,214 in FY 2013.

Officials from the **Department of Corrections (DOC)** assume the penalty provision, the component of the bill to have potential fiscal impact for DOC, is for a class A misdemeanor.

DOC cannot currently predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost through supervision provided by the Board of Probation and Parole (FY09 average of \$3.71 per offender per day, or an annual cost of \$1,354 per offender).

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services (DHSS)** assume the proposal allows any person to bring an action for MO HealthNet (Medicaid) fraud on behalf of the person and the state. The proposed legislation would allow employees or ex-employees of providers who know of Medicaid fraud to bring a suit themselves initially and provides detailed course of action for the state, through the Attorney General's Office (AGO), to respond to the suit. There is also a financial incentive built into bringing the suit as part of the recovery would go to the person bringing the suit. Current law allows these persons to bring the information to the AGO's attention, but leaves it up to the AGO in filing the cases as it deems appropriate.

DHSS assumes it is unknown how the changes in Section 191.907 would impact the Medicaid fraud work since it is unknown how many complaints would be filed as a result of this legislation. The DHSS would be required to work with the AGO in evaluating these fraud cases, if the Medicaid dollars passed through the department. The ability for a person to file the case might also have a negative impact on the cases filed. Someone may file a case before it has been fully investigated and force the case to go forward before it is proper causing a case to be lost. The impact of this bill on the DHSS is unknown due to the fact that they cannot estimate the increase in the number of Medicaid fraud cases that will result. DHSS assumes the cost to be Unknown, less than \$100,000 per year, and impacting the General Revenue and Federal Funds.

Officials from the **Department of Social Services (DOS)** state Section 6031 of the Deficit Reduction Act of 2005, section 1909 of the Social Security Act provided a financial incentive for states to enact false claims acts that establish liability to the state for the submission of false or fraudulent claims to the state's Medicaid program. If a state false claims act is determined to meet certain enumerated requirements, the state is entitled to an increase of 10 percentage points in the state medical assistance percentage.

If it is assumed this legislation will meet the requirements of the Deficit Reduction Act the state will be entitled to an additional 10% for the medical assistance percentage. It is estimated an additional \$10,000,000 to \$30,000,000 will be recovered as a result of the passage of this legislation. As a result, general revenue would be increased by an additional unknown amount greater than \$1,000,000 to \$3,000,000.

**Oversight** assumes the proposal may qualify Missouri for the federal financial incentive for the recovery of false or fraudulent Medicaid claims. Oversight assumes the amount recovered as a result of passage of this legislation to be speculative. Therefore, Oversight has reflected the general revenue increase to be a range from \$0 to Unknown.

**The proposal may increase Total State Revenue.**

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
<b>GENERAL REVENUE FUND</b>			
<u>Revenue</u> – Department of Social Services			
Incentive for recovery of false or fraudulent Medicaid claims	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Costs</u> – Office of the Attorney General			
Personal Service	(\$95,275)	(\$117,760)	(\$121,293)
Fringe Benefits	(\$49,962)	(\$61,753)	(\$63,606)
Equipment and Expense	(\$44,438)	(\$50,793)	(\$52,315)
<u>Total Costs</u> – AGO	(\$189,675)	(\$230,306)	(\$237,214)
FTE Change – AGO	2.5 FTE	2.5 FTE	2.5 FTE
<u>Costs</u> – Department of Health and Senior Services			
Evaluating/investigating fraud cases	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(\$289,675) to Unknown</u></b>	<b><u>(\$330,306) to Unknown</u></b>	<b><u>(\$337,214) to Unknown</u></b>
Estimated Net FTE Change for General Revenue Fund	2.5 FTE	2.5 FTE	2.5 FTE
<b>FEDERAL FUNDS</b>			
<u>Costs</u> – Department of Health and Senior Services			
Evaluating/investigating fraud cases	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>(Less than \$100,000)</u></b>	<b><u>(Less than \$100,000)</u></b>	<b><u>(Less than \$100,000)</u></b>

FISCAL IMPACT - Local Government

FY 2011  
(10 Mo.)

FY 2012

FY 2013

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation provides that any person may bring an action for MO HealthNet fraud on behalf of the person and the state. The person bringing the action must give a copy of the petition to the Attorney General and must also disclose to the Attorney General all material information in the person's possession. The petition shall be filed in camera, and shall remain under seal for at least 60 days, or until the state elects to intervene, whichever occurs first. Service of the petition shall not be made on the defendant until ordered by the court.

On behalf of the state, the Attorney General may elect to intervene and proceed with the action, not later than 60 days after the date the Attorney General received the petition and information. This deadline may be extended for good cause shown.

The court and the Attorney General may consent to a dismissal of an action at any time during which the petition remains under seal. If the state elects not to intervene, the person bringing the action shall have the right to proceed with the action.

No person other than the state may intervene or bring a related action based on the same underlying facts as an action brought under this section. If the state intervenes, it shall have the primary responsibility for investigating and prosecuting the action, and is not bound by any act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to limitations.

The state may limit the participation of the person who initiated the action if it finds that the person's participation would cause harassment, or would unduly delay investigation or prosecution of the action, or would be repetitious or irrelevant. Limitations may include, but are not limited to, limiting the number of witnesses, limiting length of testimony, and limiting cross-examination of witnesses.

FISCAL DESCRIPTION (continued)

Even if an action has been brought under this act, the state is free to pursue the claim through any alternate proceeding. The person bringing the initial action will have the same rights in an alternate proceeding as are provided by this act, and any final finding or conclusion in the alternate proceeding shall be conclusive on all parties to the initial action.

If the state proceeds with an action, the person who initiated the action is entitled to at least fifteen percent of the proceeds of any action brought under this section and at least twenty-five percent of the proceeds if the state does not proceed, unless the court finds that the action is based primarily on information not provided by the person initiating the action, in which case the court shall award the person no more than fifteen percent of the proceeds. If the court finds that the person bringing the action planned and initiated the violation on which the action is based, it may reduce the share of the proceeds to the extent it deems appropriate. However, any person convicted of a violation shall not be entitled to any share of the proceeds, and shall be dismissed from the action.

A person may not bring an action under this act that is based on allegations that are the subject of another civil suit or administrative penalty proceeding which has already commenced, and in which the state is a party.

A person may not bring an action under this act that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is the original source of such information.

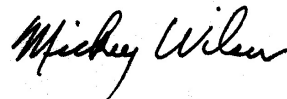
An action brought under this section shall not be brought more than six years after the date on which the violation was committed, or three years after the date when facts material to the cause of action are known or reasonably known by the Attorney General's Office or the Department of Social Services, whichever occurs last.

This act also modifies the definition of "knowingly" as it relates to MO HealthNet fraud to provide that no proof of specific intent to defraud is required.

This legislation is not federally mandated, would not duplicate any other program, and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General  
Office of State Courts Administrator  
Department of Mental Health  
Department of Corrections  
Department of Health and Senior Services  
Department of Social Services  
Office of the Governor  
Missouri House of Representatives  
Office of Prosecution Services  
Office of the State Auditor  
Missouri Senate  
Office of the State Public Defender

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
April 6, 2010